IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

CRP.No. 831 of 2007()

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AGAINST THE ORDER DATED 09/08/2007 IN EP 257/2004 IN
OS.304/2002 of MUNSIFF COURT, VAIKOM

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REVN. PETITIONER: -3RD JUDGMENT DEBTOR-3RD DEFENDANT:

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T.S. GOPI,
THALAVADYTHARA HOUSE, CHEMMANATHU KARA, VAIKOM.

BY ADV. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENTS: DECREE HOLDER & JDGT.DEBTORS 1,2-PLNTF.& DEFT.1&2:

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1. PAZHEMADAM FINANCE PRIVATE LIMITED,
KURI DIVISION, VAIKOM, REPRESENTED BY ITS
MANAGING DIRECTOR, E.K.LUKE, PAZHEMADATHIL,
VALLAKAM, VAIKOM.

2. V.P. RAJENDRAN,
MUKKUVANTHARA HOUSE, MOOTHEDATHUKAVU, VAIKOM.

3. V.N. GOPAKUMAR,
VALLYARAMBATHU HOUSE, PALLIPRATHUSSERY, VAIKOM.

BY

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 20/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**M.N.KRISHNAN, J**

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**C.R.P. No.831 OF 2007**

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**Dated this the 20th day of September 2007**

**ORDER**

This revision petition is preferred against the order of the Munsiff's Court, Vaikom in E.P.No.257 of 2004 in O.S.No.304 of 2002 whereby it found that the 3rd respondent is having sufficient means to pay and therefore ordered warrant of arrest against him. Learned counsel for the petitioner submits that the petitioner worked as a Livestock Inspector and he is receiving only a meager income as pension which is utilized for the expenses and for medical treatment of his mother. He would also contend that the retirement benefits had been utilized by him for the purpose of his daughter's marriage and for that purpose he has further borrowed amount from other parties. So, it is submitted that the reasoning given by the court below in paragraph 5 of the judgment is insufficient to order arrest against him. There is considerable force in that contention. But, I find from paragraph 4 of the order that the judgment debtor has admitted that he has got 18 cents of land. Whether money can be raised for the purpose of discharging the decree debt is a question which requires consideration. In

the light of the decision reported in ***Kuppuswamy v. P.G.Menon(1992(2) KLT 203,*** if the decree holder is able to bring home sufficient materials which satisfy the conscience of the court regarding the actual means, then there is no impediment in ordering arrest. It is also submitted by the petitioner that his client was only a surety. It is true that his liability is co-extensive with that of the principal debtor. But the courts must always consider to direct the person who had benefited by the transaction to pay back the amount, if there is possibility. So all these points require consideration.

Therefore the order under challenge is set aside and the matter is remitted back to the court below for fresh consideration after giving opportunity to all the parties to produce documents and adduce evidence in support of their respective contentions. Since I am disposing of the writ petition at the admission stage itself, the court may fix a date for hearing and issue notice to both parties, hear them and dispose of the matter in accordance with law.

**M.N.KRISHNAN, JUDGE**

**Cdp/-**